

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY
DBA SEPTA,

Plaintiff,

v.

MEDNICK MEZYK & KREDO, P.C.,
MICHAEL S. MEDNICK,

Defendants.

Civil Action No. 2:10-cv-02978-LDD

JURY TRIAL DEMANDED

DEFENDANT MEDNICK MEZYK & KREDO, P.C.'S
ANSWER TO PLAINTIFF'S COMPLAINT

Mednick Mezyk & Kredo, P.C. (“Defendant MMK”), by and through their undersigned counsel, answers and responds to Plaintiff, Southeastern Pennsylvania Transportation Authority DBA SEPTA (“Plaintiff”) Complaint as follows:

PARTIES

1. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.
2. Admitted.
3. Defendant MMK admits that Defendant Michael S. Mednick resides at 671 Cherrydale Drive, Lafayette Hill, Pennsylvania 19444. The remaining allegations of this paragraph are denied.

JURISDICTION AND VENUE

4. The allegations of this paragraph are conclusions of law to which no response is required.

5. Defendant MMK admits that Defendants do and have conducted business and reside in this Judicial District. The remaining allegations of this paragraph are conclusions of law to which no response is required.

FACTUAL ALLEGATIONS

6. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

7. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

8. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

9. Defendant MMK admits that the Southeastern Pennsylvania Transportation Authority is the listed registrant with the United States Patent and Trademark Office for U.S. Service Mark Registration Nos. 895,715 and 1,192,651. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

10. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

11. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

12. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

13. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

14. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

15. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

16. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

17. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

18. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

19. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

20. It is admitted that Defendant Mednick Mezyk & Kredo, PC is a law firm that represents clients in personal injury cases among other cases and operates a website at <www.mmklawfirm.com>.

21. Denied.

22. It is admitted that Defendant Michael Mednick registered the domain name, <MySeptaLawyer.com> on behalf of Mednick Mezyk & Kredo, PC. The remaining allegations in this paragraph are unclear and therefore Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

23. It is admitted that Defendant MMK has been assigned the phone number 888-SEPTALAW. Defendant MMK denies the remaining allegations set forth in this paragraph.

24. The allegations in this paragraph are unclear as to what “links directly” means and therefore Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

25. Defendant MMK admits that the <MySeptaLawyer.com> website lists the phone number 888-SEPTA-LAW and states that the Defendant MMK handles Septa personal injury cases. Defendant MMK denies the remaining allegations of this paragraph.

26. Defendant MMK admits that the <MySeptaLawyer.com> website states that “If you have been injured in a SEPTA bus or SEPTA trolley accident, you need to contact the lawyers at MySeptaLawyer.com for a free consultation to discuss how you may be compensated for your pain and suffering, medical bills and lost wages.” The remaining allegations of this paragraph are denied.

27. Defendant MMK admits that Mednick Mezyk & Kredo, PC has advertised in the Metro® newspaper (Philadelphia edition), but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph, and therefore, denies those allegations.

28. Plaintiff did not attach an advertisement to which Plaintiffs refers and therefore Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore, denies those allegations.

29. Plaintiff did not attach an advertisement to which Plaintiffs refers and therefore Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the allegations of this paragraph, and therefore, denies those allegations.

30. Denied.

31. Defendant MMK admits that the domain name <MySeptaLaywer.com>, the <MySeptaLaywer.com> website, and phone number (888) SEPTALAW, and the term "SEPTA Injury Lawyers" all include the word SEPTA. The remaining allegations of this paragraph are denied.

32. Defendant MMK admits that Defendant MMK and Defendant Mednick have no connection or affiliation with SEPTA or with the Legal Division of SEPTA. The remaining allegations of this paragraph are denied.

33. Denied.

34. Denied.

35. Denied.

36. Defendant MMK admits that in a letter dated March 29, 2010 Defendants denied infringement. Defendant MMK denies the remaining allegations of this paragraph.

37. Denied.

38. Denied.

COUNT 1

Trademark Infringement

39. Defendant MMK repeats its answer to Paragraph 1-38 inclusive as set forth fully herein.

40. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

COUNT II

Common Law Trademark Infringement

46. Defendant MMK repeats its answer to Paragraph 1-45 inclusive as set forth fully herein.

47. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

48. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

49. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

COUNT III

Unfair Competition and False Advertising and Designation of Origin

55. Defendant MMK repeats its answer to Paragraph 1-54 inclusive as set forth fully herein.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

COUNT IV

Dilution

62. Defendant MMK repeats its answer to Paragraph 1-61 inclusive as set forth fully herein.

63. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

64. Denied.

65. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

66. Defendant MMK is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies those allegations.

67. Denied.

68. Denied.

69. Denied.

COUNT V

Common Law Unfair Competition

70. Defendant MMK repeats its answer to Paragraph 1-69 inclusive as set forth fully herein.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Defendant MMK's alleged use of the asserted trademarks constitutes a nominative fair use and/or a fair use under the law.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or laches.

FOURTH AFFIRMATIVE DEFENSE

4. In the event further investigation or discovery reveals the applicability of any affirmative defenses enumerated in Fed. R. Civ. P. 8(c) and 12(b), Defendant MMK reserves the right to seek leave to amend its Answer specifically and assert the same. Such defenses are incorporated herein for the specific purposes of not waiving.

PRAYER FOR RELIEF

WHEREFORE, Defendant MMK respectfully request Plaintiff's Complaint be dismissed with prejudice, that judgment be entered in favor of Defendant MMK and that attorney's fees, costs and expenses be awarded to Defendant MMK. Defendant MMK also requests such other and further relief as may be just and appropriate.

Respectfully submitted,

RATNERPRESTIA

Dated: August 4, 2010

By: 

Benjamin E. Leace
Lauren Schmidt

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